THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

C.W.P.No.8194 of 1995

Date of Decision: 9 - 8 -2006

Daljit Singh Padda **.....Petitioner**

v.

State of Punjab and others **.....Respondents**

CORAM: HON'BLE MR.JUSTICE P.S.PATWALIA

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Present: Mr.Dinesh Kumar, Advocate
for the petitioner.

Mr.G.C.Gupta, DAG, Punjab
for respondents 1 to 3.

Mr.S.P.Sharma, Advocate
for respondents 4 to 8.

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P.S.PATWALIA, J. (Oral)

The petitioner's name was recommended for appointment as a Clerk to the Director Health Services, Punjab by the Subordinate Services Selection Board, Punjab (hereinafter to be referred as, `the Board') vide letter dated 6.12.1957. As a result of the recommendations made by the Board the petitioner was offered appointment as a Clerk in the office of District Medical Officer, Kapurthala where he joined on 5.4.1958. After joining the said post, the petitioner made a request on 27.10.1960 wherein he mentioned that he had learnt that few posts of Clerks were lying vacant in the office of Director Health Services, Punjab at the Headquarters at Chandigarh. He on the basis of the facts pleaded therein requested that he should be appointed in the Head office. He specifically stated

that he was ready to forego the benefit of service rendered by him at Kapurthala towards seniority if he was accommodated in the Head office. The relevant part of the request is as hereunder:-

> "In case I am appointed, I am prepared to forego the benefit of my service in this office only towards seniority in the Headquarter's office."

Accepting this request of the petitioner, by an order dated 14.3.1961 the petitioner was appointed in the main office of the Director Health Services, Punjab as against his earlier appointment in the subordinate office of the Health Department. In the order dated 14.3.1961 a specific condition has been imposed that he would be treated as a new entrant in the cadre of Clerks in the Head office. The relevant condition is as hereunder:-

> "3. that he will be treated as new entrant for the purpose of fixation of his seniority on the cadre of this office and will not be given benefit of his service in the subordinate office towards fixation of his seniority on the cadre of the main office of D.H.S. Punjab.
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> 4. He will not, in the event of his transfer to the main office maintain his name on the seniority list of clerks of subordinate offices and in the event of his being desirous of going back to a subordinate office, he will be given the position at the bottom of the seniority list of clerks of that cadre."

Accordingly, the tentative seniority list of Clerks in the Health Directorate was circulated on 14.6.1966. The petitioner's name figured at serial No.69 and his date of entry into service was shown as 31.3.1961. The petitioner claims that he made a representation claiming that he should be granted seniority with effect from 5.4.1958, the date he joined at Kapurthala. This request was declined by the Director, Health and Family Welfare, Punjab by his memo dated 28.6.1967. Thereafter another tentative seniority list of Clerks of Health

Directorate was circulated on 7.7.1978 wherein once again the petitioner's date of appointment was reflected as 31.3.1961. Petitioner made yet another request reiterating his earlier demand of being assigned seniority from 5.4.1958. However, the said request was again declined on 17.11.1979.

It is the case of the petitioner that against this action of the respondents in not granting him seniority from 5.4.1958, he filed a civil suit. The civil suit was dismissed. Against that order of dismissal of the suit, he filed an appeal. He states that when the said appeal was pending, he made yet another representation on 26.2.1986 once again seeking seniority from 5.4.1958. Accepting the said representation, an order was made on 17.7.1986 whereby it was ordered that after reconsideration the Government had decided that the claim of the official for granting seniority from back date was genuine. Therefore the seniority of the petitioner was refixed in the Head office from 5.4.1958, the date on which he joined the Health Department. This order was again set aside vide letter dated 3.10.1986 made by the Deputy Secretary, Health. Thus, the petitioner was left with no option but to approach this Court by filing Civil Writ Petition No.1480 of 1987. During the proceedings in the writ petition, the State claimed that the orders passed in favour of the petitioner could not be implemented because the appeal against dismissal of the civil suit was pending. On this the petitioner withdrew the suit and the appeal. The said orders were placed on the record of Civil Writ Petition No.1480 of 1987 which was disposed of with the following observations:-

> "Civil Misc.No.3291 of 1987 is allowed and the order passed by the learned Additional District Judge is permitted to be placed on record.
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> Mr.Bains learned Assistant Advocate General Punjab has stated that in view of withdrawal of the suit and the appeal filed by the petitioner, the orders communicated vide letter dated July 17, 1986, will be implemented within two months from today. In view

of the statement of Mr.Bains, Mr.Sharma, does not press this petition and the same stands disposed of.

Sd/-Sukhdev Singh Kang
Judge.
Sd/- M.M.Punchhi
September 15, 1987 Judge."

In the meantime certain other employees who would have become junior to the petitioner as a consequence of the orders dated 17.7.1986 filed Civil Writ Petition No.312 of 1988. They prayed that the orders passed in favour of the petitioner were against law and should be quashed. That writ petition was disposed of by this Court by directing respondent No.1 to redetermine the inter se seniority of the petitioners in that case and the petitioner in the present writ petition within a period of three months.

In order to comply with the orders made in the aforementioned writ petition, a show cause notice was issued to all the affected parties wherein it was stated that prima facie the Government had decided to grant seniority to the petitioner with effect from 5.4.1958. The proceedings commenced as a result of this show cause notice were ultimately concluded in view of a detailed order dated 14.7.1990. In this order the factual position has been noticed. The order appears to have been made after giving an opportunity of being heard to all the affected parties. The claim of the petitioner was rejected by this order. Two grounds primarily were taken by the Secretary to Government Punjab, Department of Health and family Welfare which are as hereunder:-

(i) Firstly it was found that the employees working in the office of District Medical Officer, Kapurthala were governed by the Punjab Public Health Department Subordinate Posts (Recruitment and Conditions of Service) Rules, 1940 (hereinafter to be referred as, `1940 Rules'). On the other hand the staff of the Directorate of Health Services and Medical Institutions was governed by the Medical Department

Subordinate Posts (Recruitment and Conditions of Services) Rules, 1945 (hereinafter to be referred as, `1945 Rules'). Thus, the cadre of the staff of two offices was to be governed by separate set of Rules.

(ii) Secondly it was also recorded that since the petitioner had accepted the offer of appointment in sub office but later on he applied for his transfer to the Head Office and clearly mentioned in his application that in case he was appointed in Head Office, he was prepared to forego the benefit of service rendered by him in the District office towards seniority and on that basis a specific condition was imposed in the order of transfer that the petitioner could not claim the benefit of seniority.

On this basis the request of the petitioner was declined.

The petitioner states that thereafter he claimed seniority from 5.4.1958 by making representations attached as Annexures P-12 and P-13 with this writ petition. He states that when he did not get any reply to his representations, he was left with no other option except to again file Civil Writ Petition No.2301 of 1992. In that writ petition, he prayed for a mandate to the State of Punjab to decide the aforementioned representations. The writ petition was disposed of on 17.2.1992 with a direction to consider the representations filed by the petitioner in accordance with rules and instructions. According to the petitioner the direction of this Court was not complied with by the State. As a result he again approached this Court by way of a contempt petition. In contempt petition ultimately an order was supplied to him vide which his representations were stated to have been rejected. The said order is attached with this writ petition as Annexure P-15 and reads as hereunder:-

“Sh.Daljit Singh Padda, Superintendent o/o DRME Punjab

has sent reminders to give effect to his past service towards seniority. Hon'ble Adviser to Governor has desired to see this case.

In this regard it is submitted that appeal of Sh.Daljit Singh Padda was received vide CP/802-900 which was considered at page 122-123 (L.F.) Hon'ble Adviser to Governor has already seen this case on 6-5-1991. However it is submitted that all the points raised by Sh.Padda was considered by the competent authority and offer careful scrutiny of the case as well as the direction issued by the Hon'ble Punjab and Haryana High Court his case was rejected and his representation/appeal was filed. Therefore, this representation of Sh.Padda does not merit any consideration and may be filed. This case may be shown to Hon'ble Adviser (O)/governor, Punjab with reference to his orders at Op/38."

It is the aforementioned order which has been challenged in the present writ petition.

State of Punjab has filed a detailed reply opposing the petition. A separate written statement has been filed by the private respondents as well.

The petitioner has filed a replication to the written statement filed by the State Government. In the replication besides reiterating the facts mentioned in the writ petition he has placed on record certain orders as Annexures P-19 to P-24 relying upon which the petitioner contends that he has been discriminated.

I have heard Mr.Dinesh Kumar learned counsel appearing for the petitioner, Mr.G.C.Gupta learned Deputy Advocate General, Punjab and Mr.S.P.Sharma learned counsel appearing for the private respondents. I have also gone through the voluminous record of this writ petition.

At the outset before commencement of arguments, it was pointed out to me that the petitioner as also the contesting respondents have since retired from service.

Learned counsel for the petitioner has argued that once the State Government had itself decided to give him seniority vide Annexures P-8 and P-9, the Government could not resile from those orders. Merely because the officer who had passed the orders had been transferred could not be a ground for the successor to take a different view in the matter. He further stated that he was entitled to seniority as per instructions circulated by the State Government on 15.3.1962 as modified on 8.9.1968. He further stated that in fact the petitioner had been discriminated. Certain other persons have been given seniority from the dates of their initial appointment. Lastly he submitted that at this stage no third party rights are involved and therefore even if the petitioner is assigned seniority from 5.4.1958 no other person's rights would be adversely affected. Learned counsel also submits that at the time of his initial appointment no option had been sought as to whether he wanted to work in field office or in Head office and hence he cannot now be treated unfairly.

Apart from these contentions raised in the petition, at the time when arguments were concluded, learned counsel drew my attention to Annexure R-4/7 showing the confirmation of the petitioner on 12.10.1966. By the same order one Shri Balwant Singh, Clerk was also confirmed. The learned counsel thereafter referred to Annexure P-6 which is a tentative seniority list. In that list the date of birth of the petitioner is January 10, 1938 and that of Balwant Singh January 3, 1941. On the basis of these facts and relying on Rule 7 of 1945 Rules the petitioner contended that the seniority is to be fixed from the date of confirmation. The rule further envisages that if two persons are recruited by direct recruitment from the same selection, the older person would be senior to the younger person. On a reading of Annexure R-4/7 and Annexures P-4 and P-6 the petitioner contends that since he and Balwant Singh were confirmed on the same date, he should have been shown senior to Balwant Singh. The petitioner, however, admitted that this plea had not been raised in the writ petition.

At the outset, I would first deal with this contention raised by learned counsel for the petitioner. It is the admitted position that this claim has not been made in the petition. The respondents have therefore no occasion to meet this claim. As per this contention the seniority should be fixed in terms of Rule 7 of 1945 Rules from the date of confirmation. Factually, however, the various seniority lists on the record that this was not done. A perusal of two lists attached as Annexures P-6 and P-12 reveal that seniority has been determined taking into account the date of entry of the employee into Government service. These seniority lists have been implemented and all promotions have been made on the basis of these lists. Annexure P-6 was circulated in July, 1978 which is almost three decades ago. Today it is too late in the day to upset the same specially when almost all employees would have retired. To do so would create a complete chaos in the Department. Moreover, if the lists were to be challenged proper pleadings should have been there in the petition. All affected persons would have to be impleaded as parties. Thus, I am of the opinion that since this contention was not raised in the petition, the petitioner cannot be permitted to raise the same orally. This is all the more so when today almost three decades had elapsed since the seniority was determined vide Anneuxre P-6. This contention of the petitioner is therefore rejected.

On merits the petitioner submits that once the State Government had decided to give him seniority vide Annexures P-8 and P-9, the Government could not have resiled from those orders merely because the officer who had passed the aforementioned order was transferred and succeeded by another officer. An examination of the facts of this case would show that the petitioner was transferred from the District office to the Head office on his own request. He had specifically stated that he would forego the benefit of his service rendered by him at Kapurthala if he was accommodated in the Head office. It is on this basis that the order of transfer dated 14.3.1961 was passed wherein a specific condition was

imposed that he would be treated as a new entrant in the Head office for the purpose of fixation of his seniority. The staff in the office of District Medical Officer, Kapurthala was governed by 1940 Rules and the staff of the Head office was governed by 1945 Rules. The cadre of the two offices were different being governed by separate set of rules. In view of the request of the petitioner and the specific order passed by the Government transferring him on the condition that his appointment in the Head office would be fresh appointment and also in the view of the fact that two cadres are different and governed by separate set of rules, I find no merit in the contention raised on behalf of the petitioner that he should be given seniority in the Head office with effect from the date of his original appointment in the District office at Kapurthala.

There is another aspect of the matter. After the order passed in Civil Writ Petition No.1480 of 1987 filed by the petitioner and the order passed in Civil Writ Petition No.312 of 1988 passed on a writ petition filed by other employees who became junior to the petitioner as a result of granting him seniority from the date of his original appointment, the matter was examined by the Government. Show cause notices were given to the affected parties and ultimately a detailed order dated 14.7.1990 was passed. In this order, the entire factual position is noted in detail and the representation of the petitioner was rejected by giving detailed reasons. Even though this order has been placed on the petition as Annexure P-11, there is no challenge to the same in the writ petition. I am of the opinion that with the issuance of this order dated 14.7.1990 the issue regarding seniority was finally decided against the petitioner by the Government. The order Annexure P-15 only states that all the points raised by Shri Padda were considered by the competent authority and after careful scrutiny of the case as well as the directions issued by this Court, his case had been rejected. This obviously refers to the order Annexure P-11. In the absence of any challenge to Annexure P-11, I am of the opinion that the petitioner is not entitled to any relief in this petition.

The petitioner has sought to make out his case relying on instructions dated 15.3.1962 read with instructions dated 8.9.1986. I have gone through the said instructions which are attached as Annexures P-1 and P-2. The instructions dated 15.3.1962 deals with determination of seniority of candidates recruited by the Board. The instructions state that some times letters of recommendations sent by the Board get delayed in transit or reach their destinations late thereby causing undue hardship to the candidates. Therefore the Government had decided that the seniority of the candidates should be determined on the issue of recmmendations of the Board. The instructions further state that in case officials are recommended to one office for regular appointment but are allowed to remain in another office where they are already working, their seniority would be determined with reference to the date of Board's original recommendations for their regular absorption in the other offices. I am of the opinion that the said instructions have absolutely no application to the facts of the present case. The instructions dated 8.9.1986 clarifies the instructions dated 15.3.1962. The instructions state that when an employee is recommended by the Board for regular appointment in a particular department but is not appointed to the Department where his name is recommended and later on is appointed in an office where candidates selected along with him had joined, then he would get his seniority on the basis of his merit in the list sent by the Board even though the date of appointment of various candidates appointed with him may not be the same. This is also not the situation herein. Here the petitioner had been recommended for appointment to the Department of Health and Family Welfare. He had been appointed in the same Department. However, he thereafter requested for change of his cadre from the District office to the Head office. It is that request which was accepted. Thus, the plea of the petitioner on the basis of these instructions also cannot be accepted.

Learned counsel for the petitioner further submitted that the petitioner had been discriminated. He relied upon certain orders placed on record

as Annexures P-19 to P-24 along with the replication. A reading of order Annexure P-19 would show that by the said order one Jagdish Ram, Clerk attached to the Accounts Branch of the Directorate of Health Services, Punjab was transferred to the office of Principal, Medical College Patiala. This order does not show that it was a case of transfer from a District office to the Head office. A reading of orders Annexures P-20 and P-21 would reveal that these are regarding transfer of one Shri Naurata Ram, Clerk from Ayurveda Wing of the Directorate to the clerical cadre of the main office. While in the earlier order it was stated that Shri Naurata Ram would be treated as a new entrant for the purpose of seniority but subsequently that clause was deleted. Again this is not a case for transfer from District office to the Head office. From a reading of the orders, it is not possible to ascertain whether factual position regarding Shri Naurata Ram was the same as that of the petitioner. Similarly orders Annexures P-22 to P-24 deal with transfer of Kamlesh Kumari to the office of Civil Surgeon, Bathinda from the Directorate of Health and Family Welfare, Punjab. Again the factual position regarding her transfer is not clear. In view of the fact that on an independent examination of the petitioner's case it transpires that the petitioner's transfer from the District office to the Head office was on his own request whereby he had undertaken to lose his seniority and the transfer order also incorporated the same condition, it is not possible to hold that the case of the aforesaid employees is at par with that of the petitioner and that the petitioner has been discriminated. This is all the more so when it is apparent that the Head office cadre is a separate cadre governed by separate set of rules from the District cadre. Thus, the plea of the petitioner on the basis of discrimination also cannot be sustained.

Equally so I find no merit in the argument raised by learned counsel for the petitioner that no option had been sought for as to whether he wants to work in field office or head office. Learned counsel for the petitioner has not been able to show that petitioner at the stage of his initial appointment had ever raised

any objection that he should have been appointed in the Head office. Now at this stage, it is too late in the day for the petitioner to raise any such contention in view of the detailed facts recapitulated in this judgment.

For the aforementioned reasons, there is no merit in this writ petition. The same is therefore dismissed. In the circumstances of this case there shall, however, be no order as to costs.

(P.S.PATWALIA)
JUDGE

August 9, 2006.

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